

Appl. No. 09/788,132
Amdt. dated September 6, 2005
Reply to Office Action of June 7, 2005

Remarks

The present amendment responds to the Official Action dated June 7, 2005. The Official Action objected to claim 13 as informal. Claims 1-3, 5, 6-8, 10, and 11 were rejected under 35 U.S.C. §103 based on Dhar et al. U.S. Patent Publication No. 2002/0040339 A1 ("Dhar") in view of T.A. Myers & Co., *Real Estate Problem Loans: Workout Strategies and Procedures*, Dow Jones-Irwin 1990 ("Myers") and Litton, Larry B., *The Return of Loss Mitigation*, Mortgage Banking, Washington, DC. Vol. 57, iss. 8. May 1997 ("Litton"). Claims 4, 9, 12, and 13 were rejected under 35 U.S.C. §103(a) based on Dhar in view of Myers, Litton, and Fletcher et al. U.S. Patent No. 6,112,190 (Fletcher). These grounds of rejection are addressed below.

Claims 1, 6, and 13 have been amended to be more clear and distinct. In particular, claims 1 and 6 have been amended to clarify that the loss mitigation loan workout may be automatically approved. Claims 1-13 are presently pending.

Informality Objection to Claim 13

The Examiner is thanked for his careful reading of the claims. Claim 13 has been amended to now depend on claim 12 which contains the "menu of predefined loss mitigation loan workout types" as suggested by the Examiner.

The Art Rejections

As addressed in greater detail below, Dhar, Myers, Litton, and Fletcher do not support the Official Action's reading of them and the rejections based thereupon should be reconsidered and

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withdrawn. Further, the Applicant does not acquiesce in the analysis of Dhar, Myers, Litton, and Fletcher made by the Official Action and respectfully traverses the Official Action's analysis underlying its rejections.

Claims 1-3, 5, 6-8, and 10-11 were rejected under 35 U.S.C. §103 based on Dhar in view of Myers. Dhar addresses a workflow engine for rendering instant credit decisions to determine whether to approve a consumer's loan application in order to establish a loan for the consumer. Dhar, Abstract. In so doing, a lending institution receives loan application data which activates an automatic decision analysis for "credit scoring, ratio analysis and other credit checks to meet the selection criteria of each financial institution." Dhar, para. [0041]. At page 5, the Official Action admits that Dhar does not disclose

- inputs from the outputs to, a financially trouble borrower, including inputs and outputs relating to a proposed loss mitigation workout;
- automatic loan workout decision analysis software wherein the analysis software analyzes information relating to a preexisting loan whose terms are not being met by the financially trouble borrower and other information relating to why the trouble borrower is financially troubled to determine whether to approve the proposed loss mitigation loan workout; and
- approval of the proposed loss mitigation loan workout.

Myers and Litton fail to cure the admitted deficiencies of Dhar. Myers is a lenders guide to a uniform approach to loan workouts. Myer's approach provides an analysis framework consisting of four steps including an early diagnosis of the problem asset, information gathering and analysis, development of a plan of action, and an implementation of the plan of action. In the diagnosis step, Myers provides examples of what a lender should monitor as early warning signs when managing different types of loans such as permanent loans and construction loans. In

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the information gathering and analysis step, Myers discloses gathering information relating to the borrower, relating to legal issues, relating to project monitoring, and relating to marketing alternatives. Myers, p. 16, line 37 – p. 17, line 2. When gathering information on the borrower, Myers merely discloses general factors to consider such as the borrower's integrity and motivation to see a construction project through troubled times and legal consequences. Myers, p. 17, lines 9-18. If the lender's analysis leads to a conclusion that a workout should proceed with the existing borrower, Myers suggests different alternatives. Myers, p. 18, lines 13-33. Although Myers describes some benefits and disadvantages of particular loan workout alternatives, Myers is, however, silent with respect to coupling automatic analysis with automatic workout approval. Rather, Myers approach relies on a human "decision maker to generate informed, confident decisions that maximize the return in problem situations." Myers, p. 26, lines 4-7.

Litton fails to cure the deficiencies of Myers and Dhar. Litton describes a software system to enable loss-mitigation specialists to perform what-if loss mitigation scenarios. Litton, p. 5, line 19. In particular, the Linton system analyzes financial information such as the financial condition of the borrower in order to compute a comparative schedule that lists, in order, the most economically beneficial course of action based on various what-if scenarios. Litton, p. 5, lines 19-25. Despite the input interfaces such as interfaces to credit bureaus, social security, and systems which maintain current property values, Litton, unlike the present invention, does not address the automatic approval of a loss mitigation loan workout.

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In stark contrast to Dhar, Myers, and Litton, one aspect of the present invention provides automatic approval of a proposed loss mitigation loan workout if certain predefined parameters are met. Before the presently claimed invention, a loan servicer would work with a financially troubled borrower to come up with a proposed loss mitigation loan workout. The proposed loss mitigation loan workout would have to be distributed to a mortgage institution for its approval. The approval process would typically take a long time and would vary depending on the individual specialists assigned to the workout approval decision. The time would typically be spent in the distribution phase or in the analysis of the proposed loss mitigation loan workout. The aspect of the present invention relating to automation advantageously speeds up the workout approval process by applying predefined guidelines to determine whether to automatically approve the proposed loss mitigation loan workout. Claim 1, as presently amended, recites "the central server computer having a central processing unit that runs automatic workout decision analysis software, wherein the analysis software analyzes information relating to a preexisting loan whose terms are not being met by the financially troubled borrower and other information relating to why the troubled borrower is financially troubled to determine whether to automatically approve the proposed loss mitigation loan workout, the central server computer transmitting to the financially troubled borrower, automatically over the network, automatic approval of the proposed loss mitigation loan workout if certain predefined parameters are met and, if the predefined parameters are not met, providing further instructions to the financially troubled borrower." (emphasis added). Claim 11 as previously presented similarly recites

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“approving automatically the proposed loss mitigation loan workout if the proposed loss mitigation loan workout is within said certain predefined guidelines.”

The Official Action does not interpret the limitations of claim 1 as a whole. Dhar, Myers, and Litton, taken separately or in combination, do not teach and do not suggest analysis software which analyzes both “information relating to a preexisting loan whose terms whose terms are not being met by the financially troubled borrower and other information relating to why the troubled borrower is financially troubled to determine whether to automatically approve the proposed loss mitigation loan workout,” as presently claimed by claim 1. Even combining the loan generation system taught in Dhar, the mental workout analysis framework taught in Myers for use by experienced service professionals, and the what-if loss mitigation scenario software used by loss mitigation specialists workout analysis in the manner suggested by the Official Action, the combination fails to meet the features of claim 1.

The Official Action further relies on In re Venner, 120 USPQ 192 for the notion that “it would have been obvious to one of ordinary skill in the art at the time the invention was made to have automated the processes, since it has been held that broadly providing a mechanical or automatic means to replace manual activity that accomplishes the same result involves only routine skill in the art.” (emphasis added) Applicants respectfully disagree with this analysis of In re Venner. In re Venner discusses an apparatus for molding trunk pistons which included a “time-controlled means.” The “time-controlled means” actuated a fluid motor in order to withdraw a middle core section at the proper time after pouring metal into a mold. Unlike the present Official Action, the Court in Venner found all the elements in the prior art including the

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"time-controlled means." Considering all the elements were considered old, In re Venner did not hold that a mechanical or automatic means to replace manual activity that accomplishes the same result involves only routine skill in the art. No such rule has ever been broadly applied in manner suggested by the Official Action as it would preclude automation, in general, and would foreclose many inventions which automate manual activity such as the cotton gin, a vending machine, most microprocessors and computer applications, and the like.

Even assuming that Dhar, Myers, and Litton taught all the elements of claim 1, which they do not, the automatic workout approval process does not accomplish the same result as a system with manual approval by individual specialists. By automating the workout approval process, not only is turn around time for approval reduced, but the capacity to process large numbers of workout approvals is increased. Furthermore, the specialists' individual experiences which are brought to bear on a workout approval are removed from a wide variety of situations, thereby insuring consistency and equity to similarly situated financially troubled borrowers. Furthermore, where human analysis is needed, it can be focused where it is really critical. This rejection and underlying reasoning are traversed.

Claims 4 and 9 were rejected under 35 U.S.C. §103(a) based on Dhar in view of Myers, Litton, and Fletcher. Fletcher fails to cure the deficiencies of Dhar, Myers, and Litton. Fletcher addresses a system for analyzing a prospective borrower's commercial credit to aid a credit officer in the risk assessment and completion of a loan package. Citing Fig. 14 of Fletcher, the Official Action relies on Fletcher as purportedly disclosing the selection of "a workout type among a menu of predefined workout types." Applicants respectfully disagree. Fig. 14 of

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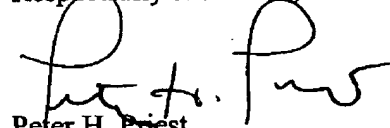
Fletcher shows a pull down menu for a loan analysis application. Fletcher does not teach and does not suggest "a loss mitigation loan workout type among a menu of predefined loss mitigation loan workout types," as presently claimed in claims 4 and 9. Furthermore, since claims 4 and 9 depend from and contain all the limitations of claims 1 and 6, respectively, as presently amended, claims 4 and 9 distinguish from the references in the same manner as claims 1 and 6.

The relied upon references fail to recognize and address the problems in the manner advantageously addressed by the present claims. The claims as presently amended are not taught, are not inherent, and are not obvious in light of the art relied upon.

Conclusion

All of the presently pending claims, as amended, appearing to define over the applied references, withdrawal of the present rejection and prompt allowance are requested.

Respectfully submitted,



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